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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LANA KAE DARNELL,

Defendant and Appellant.

F057399

(Super. Ct. No. F07907083)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Nancy A. Cisneros, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Geoffrey M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Dawson, J. and Hill, J.

## **INTRODUCTION**

Appellant Lana Kae Darnell contends her counsel rendered ineffective assistance at sentencing when he failed to object to the two-year term of the sentence. We reject a claim of ineffective assistance of counsel brought on direct appeal.

## **FACTUAL AND PROCEDURAL SUMMARY**

Darnell pled guilty to felony possession of heroin on September 12, 2007. The court suspended imposition of sentence and placed Darnell on probation for two years. Darnell violated the terms of probation. Darnell was arrested and appeared in court on the violation on March 20, 2009.

Darnell admitted violating the terms of probation. The trial court terminated probation and committed Darnell to state prison for a term of 16 months. As the trial court was imposing sentence, Darnell addressed the court and asked to be committed to the California Rehabilitation Center (CRC) instead, where she felt she would be able to obtain treatment for her addiction.

The prosecutor and the probation officer noted that a commitment to CRC would be “at least a two-year commitment.” Darnell stated, “I want CRC,” and admitted her addiction to drugs.

The trial court struck the prior order committing Darnell to state prison for 16 months and instead suspended criminal proceedings and referred Darnell to CRC for a period of two years.

## **DISCUSSION**

Darnell’s sole contention on appeal is that counsel rendered ineffective assistance because he failed to object to the two-year term of the CRC commitment or otherwise point out to the trial court that the CRC commitment need not be for a period of two years.

To establish a violation of the constitutional right to effective assistance of counsel, a defendant must show both that counsel’s performance was deficient when

measured against the standard of a reasonably competent attorney and that counsel's deficient performance resulted in prejudice to the defendant in the sense that it "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (*Strickland v. Washington* (1984) 466 U.S. 668, 686; see also *People v. Wader* (1993) 5 Cal.4th 610, 636.) If a defendant has failed to show that the challenged actions of counsel were prejudicial, a reviewing court may reject the claim on that ground without determining whether counsel's performance was deficient. (*Strickland*, at p. 697.) If the record contains no explanation for the challenged behavior, an appellate court will reject the claim of ineffective assistance "unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation." (*People v. Pope* (1979) 23 Cal.3d 412, 426 (*Pope*).)

Here, Darnell's counsel was not asked to explain, nor did he make any remarks that might be construed, directly or indirectly, as an explanation. Therefore, on direct appeal we must reject the claim of ineffective assistance of counsel, "unless there simply could be no satisfactory explanation." (*Pope, supra*, 23 Cal.3d at p. 426.)

Darnell has not demonstrated that there could be no satisfactory explanation for counsel's silence. "“In order to prevail on [an ineffective assistance of counsel] claim on direct appeal, the record must affirmatively disclose the lack of a rational tactical purpose for the challenged act or omission.” [Citation.]’ [Citation.]” (*People v. Majors* (1998) 18 Cal.4th 385, 403 (*Majors*).) Two possible reasons for counsel's silence are apparent from the record.

One possible reason for counsel's silence is that Darnell herself requested commitment to CRC. Darnell affirmatively requested a commitment to CRC *after* the trial court's initial sentence of 16 months in state prison and *after* the probation officer stated that a CRC commitment would be for two years. One can infer that Darnell was implicitly agreeing to a CRC commitment of up to two years when she affirmatively

requested the CRC commitment, instead of prison time, after being made aware of the probable term of commitment.

A second possible reason for counsel's silence is that any objection to the two-year term might have swayed the trial court to remain firm in imposing a term of imprisonment, considering Darnell's long history of failing at all rehabilitative settings. After initially receiving probation in September 2007 for felony possession of heroin, Darnell failed to complete the drug assessment treatment and drug testing. Probation was revoked in December 2007, but reinstated and she was referred to an outpatient drug treatment program. Darnell's probation again was revoked in January 2008 for failure to comply with the terms of probation but reinstated when she agreed to enroll in a treatment program and submit to weekly drug testing. Darnell again failed to comply with the terms of probation and probation was revoked in February 2008 and a bench warrant issued. Darnell was arrested and brought before the trial court in February 2009, when Darnell was given yet another chance at probation. Darnell violated probation in March 2009, leading to another revocation of probation and the current commitment to CRC.

With this lengthy history of probation and rehabilitative failures, counsel may have felt that any resistance to a two-year CRC commitment would cause the trial court to impose a prison sentence.

Darnell has failed to meet her burden of demonstrating that counsel's silence had no possible rational tactical basis. Consequently, her claim of ineffective assistance necessarily fails. (*Majors, supra*, 18 Cal.4th at p. 403.)

#### **DISPOSITION**

The judgment is affirmed.